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OGC Has Reviewed

OLC 74-2283

29 OCT 1974

MEMORANDUM FOR: General Counsel

SUBJECT : H.R. 16373, Right of Privacy Bill

STATINTL. Background: The attached Memorandum for the Record by [] concerns the adequacy of the exemption granted to the Agency from the provisions of H.R. 16373, because to justify and implement the exemption the Agency must comply with certain aspects of the rule-making procedures of section 553 of Title 5.

2. Two Questions:

(a) As the reference to section 553 is worded in our exemption, would the Agency be able to avail itself of the existing exemption in section 553 for "a military or foreign affairs function of the United States"? (Committee staffers have indicated their support for inserting legislative history in the conference report that the 553(a)(1) exemption would apply, but we wish to have your assurance that such legislative history would be effective.)

(b) What requirements would the Agency have to comply with to meet the rule-making procedures of section 553? (It may be that compliance would not create a problem, other than the one of precedent, if all that would be involved is printing in the Federal Register proper notice, Agency reiteration of the position we have already publicly made in our views letter on this legislation to the Congress (attached), listening to public witnesses, etc.)

3. An early reply will help facilitate our determination of what further action is necessary in connection with this legislation, which has a good chance of passage before this Congress adjourns.

STATINTL

[]
Acting Legislative Counsel

Attachments

Distribution: Orig - Adse, w/atts

1 - SAS/DDA 10/29

Approved For Release 2002/05/17 : CIA-RDP76M00527R000700140001-8

1 - Chrono, w/o atts OLC:LLM:cg (29 Oct 74)

INTERNAL USE ONLY

18 September 1974

MEMORANDUM FOR THE RECORD

SUBJECT: HR 16373 - Privacy Bill

STATINTL

1. [] OLC, asked me to review the 12 September draft of the subject bill which was favorably reported to the Full Committee on Government Operations. The bill generally requires that agencies inform the public of agency policy and practice concerning records maintenance and use. Agencies must make records available upon request to those individuals on whom such records are kept. Provisions of the bill may be enforced by civil suit.

2. The bill provides for a CIA exemption from most of its provisions in a novel way. Instead of exempting records maintained or originated by CIA outright, the bill provides, in effect, that the Director of Central Intelligence may do so:

(j) General Exemptions -- The head of any agency may promulgate rules in accordance with the requirements, including that of general notice, of section 553 of this title, to exempt any system of records from any part of this section except subsections (b) and (e)(2)(A) through (F) if such system of records is --

(1) maintained by the Central Intelligence Agency

The wording of this exemption poses a problem. The Director, in promulgating rules to exempt CIA records from the bill's disclosure provisions, would have to comply with 5 U.S.C. Sec. 553. This statute provides that general notice must be given of the "time, place, and nature of public rule making proceedings" and that "the

agency shall give interested persons an opportunity to participate in the rule making." Subsection 553(b)(3) provides that these procedures need not be followed in certain situations, one of which the Agency could arguably contend applies to the Director's rule making. However, since the bill's exemption states that rules may be promulgated "in accordance with the requirements of Sec. 553," it can be argued that the exemptions in Sec. 553 do not apply. In such a case, the Agency would have to hold a public hearing on its proposed rules and give interested parties an opportunity to be heard.

STATINTL

3. I made these comments orally to [redacted] in OLC.

STATINTL

[redacted]

Office of General Counsel

cc: OLC

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

29 April 1974

Honorable William S. Moorhead, Chairman
Foreign Operations and Government Information Subcommittee
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in reply to your letter dated 11 April 1974 requesting a statement for the record on H.R. 12206, "To amend title 5, United States Code, to provide that persons be apprised of records concerning them which are maintained by Government agencies," and on related bills H.R. 13303 and H.R. 13872.

H.R. 12206 would add a new section 552a to title 5 of the United States Code which would:

1. preclude an agency from providing any information about an individual to any other agency unless the individual concerned is notified (paragraph (a)(1));
2. require an agency to maintain a record of the names and addresses of all persons to whom such information was provided (paragraph (a)(3));
3. permit any person to inspect his own record, to have copies made thereof, and to supplement and correct the record (paragraphs (a)(4) and (5));
4. require an agency to remove erroneous information of any kind and notify all agencies to whom the information was disseminated (paragraph (a)(6));
5. exempt records that are specifically required by Executive order to be kept secret in the interest of the national defense and foreign policy (paragraph (b)(1));

6. require an annual report to Congress on the number of records so exempted (paragraph (c)); and

7. provide "Nothing in this section shall be construed to permit transfer or similar distribution of any information deemed confidential by other statutes." (paragraph (g)).

While the other two bills are substantially similar to H.R. 12206, H.R. 13872 also establishes a Federal Privacy Board to oversee the implementation of the legislation and narrows the exemptions for records kept secret for national defense and foreign policy reasons so that the exemption applies only if disclosure would endanger military plans, reveal military weaponry, or endanger the life of any person engaged in foreign intelligence gathering operations of the United States Government. STATOTHR

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In the interest of resolving any possible statutory conflict, the proposed legislation should specifically exempt records protected from disclosure by statute. Moreover, since the mission of this Agency exclusively relates to the field of foreign intelligence and our records pertain to the fulfillment of that function, it is requested that this Agency be specifically exempted from the proposed legislation. Recommended language in the case of H. R. 12206 is enclosed.

Due to the deadline requested, this report was discussed in general terms with the Office of Management and Budget but was not formally cleared.

Sincerely,

SIGNED

W. E. Colby
Director

H. R. 12206

Insert at page 3, line 19, after the word "specifically" the words:

"protected by or pursuant to statute"

Insert at page 4, line 4, a new subsection:

"(3) maintained by the Central Intelligence Agency."